



**OXFORD ANALYTICA**

**SUMMARY OF  
SHAREHOLDER AND CREDITOR RIGHTS  
IN KEY EMERGING MARKETS 2003**

A Study

Prepared For

**CalPERS**

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# SUMMARY OF SHAREHOLDER AND CREDITOR RIGHTS 2003

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## INTRODUCTION AND METHODOLOGY

This study surveys shareholder and creditor rights for 27 emerging market economies, using fifteen principles as benchmarks. Surveyed countries are: Argentina, Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Israel, Jordan, Malaysia, Mexico, Morocco, Pakistan, Peru, The Philippines, Poland, Russian Federation, South Africa, South Korea, Sri Lanka, Taiwan, Thailand, Turkey, and Venezuela.

Under ‘shareholder rights’, the following principles are considered: one share-one vote; proxy by mail allowed; shares not blocked before meeting; cumulative voting/proportional representation; oppressed minority (judicial venue/obligatory share repurchase); pre-emptive right to new issues; percentage of share capital to call an ESM; and mandatory dividend. An index is then aggregated of all principles, except mandatory dividend, to give an overall score for a country’s shareholder rights’ record, with a “1” given when the country has investor protection in place for a certain principle, and a “0” when not. In addition, a 1 is given if 10% or fewer of share capital suffices to call an ESM. The shareholder rights index therefore ranges from 0 to 7. The results are compiled in Table 1: Shareholder Rights.

Under ‘creditor rights’, the following principles are considered: restrictions on going into reorganisation; no automatic stay on assets during reorganisation; secured creditors first paid; management replaced in reorganisation; and legal reserve. An index is then aggregated of all principles, to give an overall score for a country’s creditor rights record, with a “1” given when the country has creditor rights protection in place for a certain principle, and a “0” when not. The creditor rights index therefore ranges from 0 to 5. The results are compiled in Table 2: Creditor Rights.

The principles and methodology are adapted from La Porta, Lopez-de-Silanes, Shleifer, and Vishny, ‘Law and Finance’, NBER Working Paper 5661, Cambridge, Mass: National Bureau of Economics, July 1996.

Judgments were made by analysing countries’ legislation, using official or commercial translations of the law(s) where available. In the Latin American countries and Morocco, legislation is cited in the original Spanish or French, while in all other countries in English from the original copy or translation. In addition, all the updated country reports were sent out to authorities, academics, in-country solicitor firms and Oxford Analytica’s in-country contributors. Feedback was received and incorporated for a number of countries.

Assessments based on the principles are made with regard to the legal framework in place, but implementation of the laws has not been considered. Legislation is cited as in the original, retaining spelling and phrasing.

Two methodological assumptions were adopted: in the ‘shares not blocked before meeting’ principle, a 0 is given only when the law *requires* that shares be blocked, thus preventing shareholders from selling those shares for a number of days, not merely allows it. In the ‘legal reserve’ principle, in some countries more than one percentage of share capital is identified as a legal reserve, or there is a range, or a part of profits must be allocated to the reserve annually until a certain percentage of share capital is reached. In all cases, the highest number is recorded in the summary table. (In the case of Taiwan, this has led to a 100% legal reserve rating, because the law requires that 10% of profits be allocated to a reserve fund each year, until the fund amounts to the total authorised capital).





**Table 1 : Shareholder rights**

| Country            | One share<br>– one vote | Proxy by<br>mail allowed | Shares not<br>blocked before<br>meeting | Cumulative<br>voting/proportion<br>al representation | Oppressed<br>minority | Preemptive<br>rights to new<br>issues | % of share<br>capital to call<br>an ESM | Shareholder<br>rights index | Mandatory<br>dividend |
|--------------------|-------------------------|--------------------------|---|--|-----------------------|---------------------------------------|---|-----------------------------|-----------------------|
| Argentina          | 0                       | 0                        | 0                                       | 1  | 1                     | 1                                     | 5%                                      | 4                           | 0                     |
| Brazil             | 1                       | 0                        | 1                                       | 1  | 1                     | 1                                     | 5%                                      | 6                           | 25%/50%               |
| Chile              | 1                       | 0                        | 1                                       | 1  | 1                     | 1                                     | 10%                                     | 6                           | 30%                   |
| China              | 1                       | 0                        | 1                                       | 0  | 1                     | 0                                     | 10%                                     | 4                           | 0                     |
| Colombia           | 0                       | 0                        | 1                                       | 0  | 1                     | 1                                     | 20%                                     | 3                           | 50%                   |
| Czech Republic     | 0                       | 0                        | 1                                       | 0  | 1                     | 1                                     | 3/5%                                    | 4                           | 0                     |
| Egypt              | 0                       | 0                        | 1                                       | 0  | 1                     | 0                                     | 10%                                     | 3                           | 0                     |
| Hungary            | 0                       | 0                        | 1                                       | 0  | 0                     | 1                                     | 10%                                     | 3                           | 0                     |
| India              | 1                       | 0                        | 1                                       | 1  | 1                     | 1                                     | 10%                                     | 6                           | 0                     |
| Indonesia          | 1                       | 0                        | 1                                       | 0  | 1                     | 1                                     | 10%                                     | 5                           | 0                     |
| Israel             | 0                       | 1                        | 1                                       | 0  | 1                     | 0                                     | 5%                                      | 4                           | 0                     |
| Jordan             | 1                       | 0                        | 1                                       | 0  | 1                     | 0                                     | 15%/25%                                 | 3                           | 0                     |
| Malaysia           | 1                       | 0                        | 1                                       | 0  | 1                     | 1                                     | 10%                                     | 5                           | 0                     |
| Mexico             | 1                       | 0                        | 1                                       | 1  | 1                     | 1                                     | 10%                                     | 6                           | 0                     |
| Morocco            | 1                       | 0                        | 1                                       | 0  | 1                     | 1                                     | na                                      | 4                           | 0                     |
| Pakistan           | 0                       | 0                        | 1                                       | 1  | 1                     | 1                                     | 10%                                     | 5                           | 0                     |
| Peru               | 1                       | 0                        | 1                                       | 1  | 1                     | 1                                     | 20%                                     | 5                           | 0                     |
| Philippines        | 0                       | 0                        | 1                                       | 1  | 1                     | 1                                     | Open                                    | 5                           | 0                     |
| Poland             | 1                       | 0                        | 1                                       | 1  | 1                     | 1                                     | 10%                                     | 6                           | 0                     |
| Russian Federation | 1                       | 0                        | 1                                       | 1  | 1                     | 1                                     | 10%                                     | 6                           | 0                     |
| South Africa       | 0                       | 1                        | 1                                       | 0  | 1                     | 1                                     | 5%                                      | 5                           | 0                     |
| South Korea        | 1                       | 1                        | 1                                       | 1  | 1                     | 1                                     | 3%                                      | 7                           | 0                     |
| Sri Lanka          | 0                       | 0                        | 1                                       | 0  | 1                     | 0                                     | 10%                                     | 3                           | 0                     |
| Taiwan             | 1                       | 0                        | 1                                       | 1  | 1                     | 1                                     | 3%                                      | 6                           | 0                     |
| Thailand           | 1                       | 0                        | 1                                       | 1  | 1                     | 0                                     | 20%/10%                                 | 4                           | 0                     |
| Turkey             | 0                       | 0                        | 1                                       | 1  | 1                     | 1                                     | 10%                                     | 5                           | 0                     |
| Venezuela          | 0                       | 0                        | 0                                       | 0  | 1                     | 0                                     | 20%                                     | 1                           | 50%                   |

In the above table a “1” means the shareholder right is in the law. ‘Shareholder rights index’ is the sum of the seven principles from ‘one share-one vote’ to ‘% of share capital to call an ESM’, with the latter being given a 1 if the value is 10% or less.





**Table 2 : Creditor rights**

| Country            | Restrictions on going into reorganisation | No automatic stay on assets | Secured creditors first (paid) | Management replaced (in reorganisation) | Creditor rights index | Legal Reserve required as % of capital |
|--------------------|---|-----------------------------|--------------------------------|---|-----------------------|--|
| Argentina          | 1   | 0                           | 1                              | 0                                       | 2                     | 20%                                    |
| Brazil             | 1   | 1                           | 0                              | 0                                       | 2                     | 20%                                    |
| Chile              | 1   | 1                           | 0                              | 0                                       | 2                     | 0                                      |
| China              | 1   | 0                           | 1                              | 0                                       | 2                     | 50%                                    |
| Colombia           | 1   | 0                           | 1                              | 0                                       | 2                     | 50%                                    |
| Czech Republic     | 0   | 0                           | 0                              | 0                                       | 0                     | 20%                                    |
| Egypt              | na  | 1                           | 0                              | na                                      | 1                     | 50%                                    |
| Hungary            | 1   | 0                           | 0                              | 0                                       | 1                     | Na                                     |
| India              | 1   | 1                           | 1                              | 0                                       | 3                     | 0                                      |
| Indonesia          | 1   | 1                           | 1                              | 1                                       | 4                     | 20%                                    |
| Israel             | 1   | 1                           | 1                              | 0                                       | 3                     | 0                                      |
| Jordan             | na  | na                          | 0                              | na                                      | 0                     | 25%                                    |
| Malaysia           | 1   | 1                           | 1                              | 0                                       | 3                     | 0                                      |
| Mexico             | 1   | 0                           | 0                              | 0                                       | 1                     | 20%                                    |
| Morocco            | 0   | 1                           | 1                              | 1                                       | 3                     | 0                                      |
| Pakistan           | 1   | 1                           | 1                              | 0                                       | 3                     | 0                                      |
| Peru               | 1   | 0                           | 0                              | 1                                       | 2                     | 20%                                    |
| Philippines        | 1   | 0                           | 0                              | 0                                       | 1                     | 0                                      |
| Poland             | 0   | 0                           | 0                              | 0                                       | 0                     | 33%                                    |
| Russian Federation | 1   | 0                           | 0                              | 0                                       | 1                     | 5%                                     |
| South Africa       | 1   | 0                           | 1                              | 1                                       | 3                     | 0                                      |
| South Korea        | 1   | 1                           | 1                              | 1                                       | 4                     | 50%                                    |
| Sri Lanka          | 1   | 1                           | 0                              | 0                                       | 2                     | 0                                      |
| Taiwan             | 1   | 0                           | 1                              | 1                                       | 3                     | 100%                                   |
| Thailand           | 1   | 0                           | 1                              | 1                                       | 3                     | 10%                                    |
| Turkey             | 1   | 0                           | 0                              | 0                                       | 1                     | 33%                                    |
| Venezuela          | na  | na                          | 0                              | na                                      | 0                     | 10%                                    |

In the above table a “1” in a column means that creditor protection is in the law. ‘Creditor rights index’ is the sum of the four principles. Na=not applicable.





## COUNTRY SUMMARIES

### ARGENTINA

Two laws were utilised for Argentina: the Company Law 19.550 (Ley Comercial de Sociedades - 19.550) and the Restructuring and Bankruptcy Law N° 24.522 (Ley de concursos y quiebras N° 24.522). Assistance was provided by Alejo Monner-Sans, Oxford Analytica Contributor, based in Buenos Aires.

### BRAZIL

Shareholder rights in Brazil are prescribed in Law 6,404, of December 1976, as amended (the "Corporation Law"). The Corporation Law regulates the 'sociedade anônima', which is the corporate form most closely resembling a joint-stock company or corporation. The Law n° 6.404/1976 was last amended in 2001 [Law n° 10.303/2001]. Bankruptcy is regulated under Decree-Law n° 7.661/1945 which is still in force. It was last amended in 1998. The new Brazilian Bankruptcy Law has not yet been passed, and is in discussion at the Federal Senate. The bill number in Senate is PLC 71/2003 and in the Chamber of Deputies [Câmara dos Deputados] is PL. 4376/1993.

### CHILE

The corporate legal framework of Chile is governed by company law 18046 dated 1981 (Ley sobre Sociedades Anónimas 18046 de 1981). The winding up or liquidation law applies to companies and is contained in the bankruptcy law 18175. Congress is currently considering major changes to Law 18175 that, if approved, will increase the transparency of the restructuring process of companies and will strengthen the role of the Bankruptcy Superintendence. Assistance was provided by Mr Alejo Monner-Sans, Oxford Analytica Contributor, based in Buenos Aires.

### CHINA

The Company Law 1993, amended 1999, with effect from December 1999 governs shareholders' rights in China. The code of Corporate Governance for Listed Companies in China, with effect from January 2002 was utilised for the cumulative voting rights section. Several laws provide for Chinese creditor protection measures. The Enterprise Bankruptcy Law (trial implementation, with effect from November 1988) is applicable to state-owned enterprises (SOE). China's lawmakers have been sitting on an updated version of the 1988 bankruptcy law for several years. China's Supreme Court, in an attempt to make the current system more workable, handed in September 2002 an interpretation of the existing bankruptcy law, which allowed judges to expedite cases before the bench. The Law of Civil Procedure of the People's Republic of China also prescribes procedures for liquidation of a company.





## COLOMBIA

The main law governing the securities market in Colombia is the Colombian Commercial Code - Código de Comercio de Colombia/1971 (Last Modified in 1997). Law 222/1995, which upgrades Book II of the Código de Comercio, presents a regime for reorganisation proceedings. Winding up or liquidation is contained in Law 222 dated 1995. Corporate rescue is covered under law 550 dated 1999, which was last amended in 2002. The Código de Comercio de Colombia provides information about the mandatory legal reserve. We corresponded with a legal expert from a major international accounting firm in Colombia.

## CZECH REPUBLIC

The main law of relevance to shareholder and creditor rights in the Czech Republic is the Commercial Code (Act no. 513/1991) as amended. In addition to the Commercial Code, insolvency proceedings are governed by the Law on Bankruptcy and Compensation, No 328/1991, as amended. Assistance was provided by Dr Jarmo Kotilaine, Oxford Analytica Project Manager.

## EGYPT

The corporate legal framework of Egypt originates primarily from French civil law. Sharia law has no direct influence on corporate governance. While there are four laws under which a company listed on the exchange may be incorporated, the only relevant one from the perspective of shareholder and creditor rights is the Companies Law (CL 159/1981) on joint stock companies, partnerships limited by shares & limited liability companies. The version of the Companies Law used was that available from Egyptlaws.com and last updated in April 2003. The main laws governing the securities market in Egypt are the Capital Market Law (CML 95/1992), which regulates the capital market and provides the framework and supervision of the Cairo and Alexandria Stock Exchange (CASE), and the Central Depository Law (CDL 93/2000), which supports shareholder record keeping, clearing and settlement. Bankruptcy provisions can be found in the Egyptian Trade Law (sometimes called Commercial Code by translators), Law No.17 of 1999.

## HUNGARY

Hungarian Company Law, Act CXLIV of 1997 on Business Associations, has been amended several times in recent years. The current version is new and effective from January 2004. Act XLIX of 1991 on Bankruptcy Proceedings, Liquidation Proceedings and Members' Voluntary Dissolution was recently amended. Its current version is valid from January 2004 until EU accession. Upon EU accession, a later amendment will come into force. Act XLIX of 2003 of the same name also came into force in January 2004 but concerns the new European Economic Interest Grouping and so is not considered relevant.

## INDIA

Five acts govern corporate activity in India: the Companies Act, 1956 with its periodic amendments; the Securities Contracts (Regulation) Act, 1956; and the Securities and Exchange Board of India (SEBI) Act, 1992. The latest amendment to the Companies Act, 1956 was the Companies (Second Amendment) Act, 2002 [with effect from January, 2003]. The Indian government is currently considering further amending the Companies Act 1956. The Companies (Amendment) Bill, 2003 proposes to make some far-reaching





changes, including measures to enhance corporate governance and investor protection. Main changes in the 2004 report include changing the score of India's cumulative voting to 1. Assistance was provided by Dr. Krishna Kumar, Oxford Analytica Contributor, based in Bangalore.

## **INDONESIA**

Shareholder protection measures are provided by Law of The Republic of Indonesia Number 1 of 1995 Concerning Limited Liability Companies (referred to as the Company Law 1995). Reorganisation is covered in the Bankruptcy Law (Chapter II The Moratorium on Debt Repayment). Amendments to Company Law and Bankruptcy Law laws have been proposed but because there is to be a general election in Indonesia in 2004, parliament members will go into recess shortly. The current Bapepam Regulation concerning Preemptive Rights is: Regulation IX.D.1. Decision of the Chairman No. Kep 26/PM/2003 dated 17 July 2003. We corresponded with a legal expert at CDC Group.

## **ISRAEL**

The Companies Law 5759-1999 and the November 2002 update to Companies Regulations regulate shareholders' rights. Creditor rights are defined in the Companies Law and the Bankruptcy Ordinance. We corresponded with Clearview, a legal translating firm.

## **JORDAN**

There are two legal documents that establish the framework for corporate governance in Jordan. The Companies Law (no. 22/1997), published in the Official Gazette No 4204 dated 15 May 1997 and the rules and regulations of the Amman Stock exchange. Assistance was provided by Pam Dougherty, Oxford Analytica Contributor.

## **MALAYSIA**

The relevant legislation for shareholder and creditor rights are the Companies Act 1965 (Act 125), with amendments and the Bankruptcy Act of 1967. The Companies Act is supplemented by the Listing Requirements of Kuala Lumpur Stock Exchange, 2001 including amendments up to January 2004. Assistance was provided by Dr William Hansen, Oxford Analytica Contributor, based in Penang.

## **MEXICO**

The Mexican regulations for shareholder rights are mainly contained in the Ley General de Sociedades Mercantiles (Companies Law) and Ley de Mercado de Valores (Securities Market Law). The Commercial Reorganisation and Bankruptcy Law governs the bankruptcy and reorganisation of corporations. The Mexican Securities Market Law was updated in June 2003. Assistance was provided by Dr Guillermo Zamarripa, Vice-president, Banks and Securities Commission, in Mexico City.





## MOROCCO

The Code of Commerce and laws related to corporate governance in Morocco were reformed in 1996 and 1997. These laws, mainly based on French regulations, replaced most of the former 1913 laws. Legislation relevant to shareholders and creditors' rights underwent minor changes in the last twelve months. The Code of Commerce (Dahir n° 1-96-83 du 15 rabii 1417 portant promulgation de la loi n° 15-95 formant code de commerce) and the Law on Governing Corporations (Dahir n° 1-96-124 du 14 rabii II 1417 portant promulgation de la loi n°17-95 relative aux Société Anonyme) provide the main legislative framework, in addition to relevant resolutions, decrees and circulars. Background information is provided in a Report on Corporate Governance in the MENA region (October 2003) by the Center for International Private Enterprise (CIPE) and the Global Corporate Governance Forum (GCGF), and a ROSC on Corporate Governance in Morocco (May 2003). In addition, we corresponded with officials at the Moroccan Stock Exchange.

## PAKISTAN

The Companies Ordinance 1984 (XLVII of 1984) was last updated by the Companies (Second Amendment) Ordinance 2002. Minor changes in the listing rules of the Karachi Stock Exchange (KSE) are also referenced. Overall, Pakistan's insolvency regime is a derivative of the legal system prevalent in British India prior to its establishment. Winding-up or liquidation practices are contained in the Companies Ordinance 1984, although it also refers to the bankruptcy law contained in the Provincial Insolvency Act 1920 and the Insolvency (Karachi Division) Act 1090. Additionally, legislation enacted in 1997 provides for the recovery of corporate debt by banks and development finance institutions, namely the Banking Companies (recovery of loans, advances, credits and finances) Act 1997, which may also be initiated under the Civil Procedure Code of 1882.

## PERU

The corporate legal framework is set out in the Company Law 26887 of 1997 (Ley General de Sociedades 26,887 de 1997). Winding-up or liquidation practices apply to all companies as contained in the Bankruptcy Law of 2002 (Ley General del Sistema Concursal de 2002), which also covers reorganisation procedures. Additionally, the Peruvian Commercial Law (Ley General de Sociedades 26,887) provides information about the mandatory legal reserve. A leading law firm in Peru confirmed that there were minor updates to the law in 2003; Ms Mary Powers, Oxford Analytica Contributor based in Lima, provided further assistance.

## THE PHILIPPINES

The Securities and Exchange Commission (SEC) in Resolution No.135, April 2002, approved the promulgation and implementation of a "Code of Corporate Governance", where compliance is compulsory for all registered or listed corporations. The law governing the Philippine suspension of payments proceedings is not integrated into a single code. The substantive provisions governing reorganisation and liquidation are found in the Insolvency Act (Act No. 1956). The provisions governing priority of claims are found in the Civil Code. As of Jan 2004, the draft for a new insolvency law (Corporate Recovery Act) remained under consideration for congressional approval. The draft provides debt relief and recovery measures to financially distressed enterprises and offers four modes of rehabilitation: pre-negotiated rehabilitation, fast-track rehabilitation, court-supervised rehabilitation, and dissolution-liquidation. In





addition, the Interim Rules of Procedure developed by the Supreme Court in December 2000 (to govern rehabilitation cases) and the Securities Regulation Code (which transferred the quasi-judicial jurisdiction of the SEC over suspension of payments and rehabilitation proceedings to the Regional Trial Courts) remain in force. Assistance was provided by Dr William Hansen, Oxford Analytica Contributor, based in Penang.

## **POLAND**

The Commercial Code published in Dziennik Ustaw (Journal of Laws) 2003, No. 49, item 408, was obtained from Allen Overy, which is an updated version of the Commercial Companies Code of 2000 (Act no 15 of September 2000, which entered into force in January 2001). Relevant legislation is also found in the Law on Public Trading of Securities (August 1997, and updated in Journal of Laws of 2002, No. 25, item 253), which modified the protection of minor shareholders. Assistance was provided by Dr Jarmo Kotilaine, Oxford Analytica Project Manager. Input was received from Dr Miroslaw Kachniewski, Secretary of the Commission, Polish Securities and Exchange Commission.

## **RUSSIA**

The Federal Law on Joint-Stock Societies (as amended in Jan 1998) establishes shareholders' rights in Russia, while the Federal Law on Insolvency (or Bankruptcy, October 2002) regulates creditors' rights. The latest Russian laws were obtained from "Russian Company and Commercial Legislation" edited by WE Butler (OUP). Assistance was provided by Dr Jarmo Kotilaine, Oxford Analytica Project Manager.

## **SOUTH AFRICA**

The Companies Act no. 61 of 1973 provides the main framework for corporate governance. The Act was updated three times in 2003 by the Judicial Matters Amendment Act (No. 16 of 2003); the Judicial Matters Amendment Act, 2002 (No. 55 of 2002) as reported in GG 24277 dated 17 January 2003; and the Corporate Laws Amendment Act, 2002 (No. 39 of 2002) as reported in GG 24280 dated on 22 January 2003. Additional practices are included in the Insolvency Act no. 24 of 1936, amended by the Judicial Matters Amendment Act, 2003 (No. 16 of 2003) and the Judicial Matters Second Amendment Bill (B 41-2003). Assistance was provided by Professor Hugo Nel, Oxford Analytica Contributor.

## **SOUTH KOREA**

The Korean Commercial Code (KCC) and the Securities Exchange Act (SEA) govern shareholders' rights. Insolvency laws consist of: (i) the Bankruptcy Act, (ii) the Composition Act and (iii) the Corporate Reorganisation Act. There were minor changes to these laws, but no major amendments were enacted in the last twelve months that would affect previous ratings. On creditor rights, since early 2002, the Korean government has been considering a new consolidated insolvency law (a combination of a Korean Corporate Reorganisation Act, Bankruptcy Act, and Composition Act) but this was hitherto not approved. Assistance was provided by Sokjin Chang, Researcher, Fiscal Cooperation Team, Fiscal Planning Office, Ministry of Planning and Budget.





## **SRI LANKA**

Public companies are incorporated under the Companies Act No. 17 of 1982, as amended by the Amendment Act 33 of 1991. The Securities and Exchange Commission of Sri Lanka Act (No. 36 of 1987), was amended by Act No. 26 of 1991, in order to regulate licensing of Stock Exchanges by the Securities and Exchange Commission (SEC). In addition, the SEC of Sri Lanka Rules of 1990 specify the listing requirements.

## **TAIWAN**

Provisions for shareholder rights in Taiwan are found in the Company Law 1929 as amended in November 2001. The Company Law (Section X Reorganization of a Company) provides a formal rescue mechanism for companies in financial difficulty via Court Reorganisation. This mechanism is available only to companies that publicly issue shares or corporate bonds (Article 282). The Bankruptcy Law states procedures for composition or bankruptcy. Most measures for shareholders and creditors are contained in the Company Law. Taiwan's Securities and Futures Commission and Ministry of Finance also promulgated "Rules Governing the Use of Proxies for Attendance at Shareholder Meetings of Public Companies" in 2002, which were further amended in May 2003. The Taiwanese government is currently considering amending the Company Law in order to enhance corporate governance and shareholders' protection. One of the proposed changes is to allow proxy by mail and email/internet (the draft bill being currently reviewed at legislative bodies).

## **THAILAND**

Relevant legislation/regulations include the Public Limited Company Act B.E. 2535, the Civil and Commercial Code and the Securities and Exchange Act B.E. 2535 (false disclosure if the securities offered for sale are stocks). Creditor rights during reorganisation and bankruptcy are provided in the Bankruptcy Act B.E.2483 (1940), amended by Bankruptcy Act (No. 5) B.E. 2542 (1999). It is noted that the Bankruptcy Act (No.5) B.E 2542 (1999) was further amended (No. 6) in 2003 -- but these changes had very limited effect. We corresponded with several officials at the Thai Securities and Exchange Commission, in addition to legal experts.

## **TURKEY**

The structure and organisation of joint stock companies are subject to regulation by the Turkish Commercial Code. Capital Market Board regulations also apply to joint stock companies whose shareholders' number at least 250, or who have issued bonds or whose shares are quoted on the Istanbul Stock Exchange. Bankruptcy is governed by the Execution and Bankruptcy Act of 1929, as amended up to July 17, 2003 based on the Turkish text. Further amendments to the Bankruptcy Act are expected in early 2004, concerning 'pre-packaged bankruptcy', where these changes may be held to limit creditors' rights. Assistance was provided by Mr Ali Kartal (Aybay & Aybay Law Firm, Istanbul) and Mr Bernard Kennedy, Oxford Analytica Contributor, based in Ankara.





## **VENEZUELA**

The main laws governing the securities market in Venezuela are the Capital Markets Law dated 1998 (Ley de Mercado de Capitales de 1998) and the Commercial Code of 1955 (Código de Comercio de 1955). Winding-up or liquidation law applies to companies as established under the Commercial Code and the Civil Proceedings Code of 1990 (Código de Procedimiento Civil de 1990). Corporate rescue/restructuring is contemplated under the Commercial Code, but there is no law exclusively on bankruptcy, corporate restructuring or reorganisation processes. Special laws regulate some institutions (for example, banks, financial institutions and insurance firms), such that their bankruptcy/reorganisation procedures are spelled out in circulars. However, the Capital Markets Law includes Article 10 that specifies that the stock market regulator (Comisión Nacional de Valores) has the power to regulate bankruptcy/reorganisation for companies under its jurisdiction. Articles 82 and 83 relate to these issues in the case of brokerage companies. Assistance was provided by Mr Luis Ernesto Andueza (Despacho de Abogados miembros de Macleod Dixon, Caracas).

